

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Robert B. Smalls, # 208766,

Plaintiff,

v.

Ronaldo Myers,

Defendant.

C/A No. 9:05-2995-GRA-GCK

ORDER

(Written Opinion)

This matter is before the Court for a review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), D.S.C., and filed May 3, 2006. Plaintiff seeks relief under Title 42, United States Code § 1983 from the defendant, Ronaldo Myers, the Director of the ASGDC, due to the allegedly unsanitary and overcrowded conditions at the ASGDC. Defendant has filed a motion for summary judgment, and Plaintiff filed a Response thereto. The magistrate recommends granting Defendant's Motion for Summary Judgment, dismissing this case with prejudice as failing to state a claim upon which relief may be granted, and that this case be deemed a "strike" for purposes of the "three strikes rule" of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(e) and 42 U.S.C. § 1997(e). The magistrate further recommends that Plaintiff's Motion to Compel be deemed moot.

Plaintiff is proceeding *pro se*. This Court is required to construe *pro se*

pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th. Cir. 1983). Plaintiff has not objected to the Report and Recommendation.

After a review of the magistrate's Report and Recommendation, this Court finds that the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

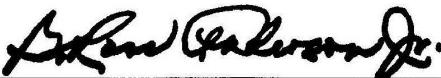
IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment

be GRANTED and that Plaintiff's complaint be DISMISSED with prejudice for failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that Plaintiff's complaint be deemed a "strike" for purposes of the "three strikes rule" of the PLRA, 28 U.S.C. § 1915(e) and 42 U.S.C. § 1997(e).

IT IS FURTHERED ORDERED that Plaintiff's Motion to Compel be DENIED as moot.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

May 23, 2006.

NOTICE OF RIGHT TO APPEAL

Plaintiff has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.